

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LILLIAN FRANCIA COLON,	§
PLAINTIFF,	§
	§
	§ CIVIL CASE No. 3:21-CV-2708-S-BK
	§
	§
FELIX CORONA,	§
DEFENDANT.	§

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this case was referred to the United States magistrate judge for case management, including the issuance of findings and a recommended disposition where appropriate. Upon review of the relevant pleadings and applicable law, this action should be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

I. BACKGROUND

On November 2, 2021, Lillian Francia Colon of Dallas, Texas, filed a *pro se* complaint against Felix Corona of Greenville, Texas. [Doc. 3 at 1-2](#). Colon asserts that in 2013, she bought property from Corona in Greenville valued at \$6,500, but Corona has since refused to turn over the deed to the property. [Doc. 3 at 2-3](#). As such, she maintains that she has not been able to build a home as planned and has incurred about \$19,500 in out-of-pocket expenses to maintain the property and for pre-constructions expenses for plans and permits. [Doc. 3 at 3](#). Colon requests \$35,000 in compensatory damages to cover her expenses and legal fees sustained in bringing this action. [Doc. 3 at 3-4](#). Colon also requests a “temporary injunction to require the Defendant to give the . . . property deed to the plaintiff.” [Doc. 3 at 3-4](#).

Upon review, the Court concludes that subject matter jurisdiction is lacking. Thus, this action should be dismissed *sua sponte*.

II. ANALYSIS

Although Colon paid the filing fee, the Court should always examine, *sua sponte*, if necessary, the threshold question of whether it has subject matter jurisdiction. *System Pipe & Supply, Inc. v. M/V Viktor Kurnatovsky*, 242 F.3d 322, 324 (5th Cir. 2001); *FED. R. Civ. P. 12(h)(3)* (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Unless otherwise provided by statute, a federal district court has subject matter jurisdiction over (1) a federal question arising under the Constitution, a federal law, or a treaty, *see 28 U.S.C. § 1331*, or (2) a case where there is complete diversity of citizenship between parties and the matter in controversy exceeds \$75,000, *see 28 U.S.C. § 1332*. “Under the well-pleaded complaint rule, ‘a federal court has original or removal jurisdiction only if a federal question appears on the face of the plaintiff’s well-pleaded complaint; generally, there is no federal jurisdiction if the plaintiff properly pleads only a state law cause of action.’” *Gutierrez v. Flores*, 543 F.3d 248, 251-52 (5th Cir. 2008).

The Court liberally construes Colon’s complaint with all deference due a *pro se* litigant. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (noting *pro se* pleadings are “to be liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers”); *Cf. FED. R. Civ. P. 8(e)* (“Pleadings must be construed so as to do justice.”). Even under this most liberal construction, however, Colon has not alleged facts that establish federal question or diversity jurisdiction.

“A federal question exists only [in] those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief

necessarily depends on resolution of a substantial question of federal law.” *Singh v. Duane Morris LLP*, 538 F.3d 334, 337-38 (5th Cir. 2008) (citation and internal quotation marks omitted). The complaint in this case does not support federal question jurisdiction, as Colon does not allege any constitutional or federal statutory violation. At best, Colon alleges only a state claim arising from a property dispute.

Also, Colon’s scant pleadings do not plead the existence of facts establishing subject-matter jurisdiction on the basis of diversity, which requires complete diversity of citizenship and a good faith claim for damages in excess of \$75,000. 28 U.S.C. § 1332. Even assuming *arguendo* that there is complete diversity of citizenship among the parties (which is not clear from the complaint), diversity jurisdiction is nevertheless lacking. The \$35,000 sought in damages is clearly less than the \$75,000 damages threshold required. Doc. 3 at 3-4.

In addition, because the complaint does not present a sufficient basis for federal question or diversity jurisdiction, the Court cannot exercise supplemental jurisdiction over any state law claims Colon may be attempting to assert. 28 U.S.C. § 1337(a).

Accordingly, the complaint should be dismissed *sua sponte* and without prejudice for lack of subject matter jurisdiction.

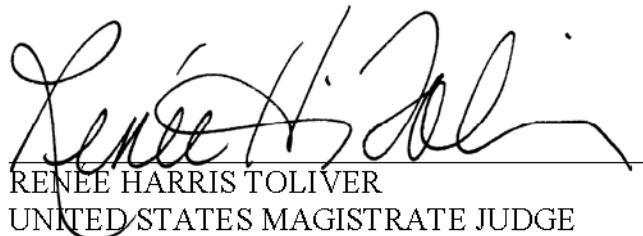
III. LEAVE TO AMEND

Ordinarily, a *pro se* plaintiffs should be granted leave to amend her complaint prior to dismissal, but leave is not required when she has already pled her “best case.” *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009). Here, the facts alleged by Colon in her complaint clearly demonstrate a lack of subject matter jurisdiction in this Court. Thus, granting leave to amend would be futile and cause needless delay.

IV. CONCLUSION

For the foregoing reasons, it is recommended that the complaint be **DISMISSED** **WITHOUT PREJUDICE** for lack of subject matter jurisdiction. [FED. R. CIV. P. 12\(h\)\(3\)](#).

SO RECOMMENDED on November 30, 2021.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).* An objection must identify the finding or recommendation to which objection is made, the basis for the objection, and the place in the magistrate judge's report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute on other grounds, 28 U.S.C. § 636(b)(1)* (extending the time to file objections to 14 days).